In the High Court of Uttaranchal, at

Nainital.

A.O. No. 485/2005

Uttar Pradesh State Road Transport
Corporation, Meerut Region,
Through its Regional Manager ... Appellant.

Versus

1-Atul Virmani, S/o Subhash Chandra Virmani
R/o 105, Chaakrata Road, Dehradun
District Dehradun.

2-Oriental Insurance Co. Ltd.
Divisional Office at Rajpur Road
Dehradun, through its
Divisional Manager ..... Respondents.

Sri Ramji Srivastava, learned counsel for the appellant.
Sri Gopal Narain, Sri M.K. Goel, Advocates for the respondents.

Hon'ble B.C. Kandpal, J.

Hon'ble B.S. Verma, J.

Dated: 22-06-2006.

This Appeal from Order, U/S 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and award dated 30-07-2005, passed by MACT/ V F.T.C. Dehradun, in MACP No. 13/2004 Atul Virmani Vs. Subhash Chandra and others, whereby a sum of Rs. 3,37,000/- were awarded as compensation alongwith interest @ 6% per annum from the date of claim petition till the date of realization, payable by U.P. S.R.T.C.

2- Brief facts of the case are that on 8-6-2003 the claimant Atul Virmani in the Indica Car of his friend

Rajeev Sharma proceeded from Delhi to Dehradun and when on 9-6-2003 at 2.10 A.M. they reached at Roorkee-Delhi Flyover, Bus bearing registration No. U.P. 15-E-0420, came there rashly and negligently which hit the car, due to which Rajeev Sharma, who was driving the Indica Car died and the claimant and Rajeev Malhotra the occupants of the Indica Car sustained grievous injuries. All the injured were brought to Civil Hospital Roorkee, where Rajeev Sharma was declared dead by the doctors. According to the claimant after first aid he was referred to C.M.I. Hospital Dehradun where he remained admitted and got treatment. The right eyebrow of the claimed was disfigured to the accident and it was brought to its normal state by surgery. The claimant alleged that he spent about two lacs rupees on his treatment. Due to the accident he has become temporarily disabled as he is suffering from headache continusously. According to the claimant due to the injuries sustained by him he remained bedridden for about three months and thereafter he had to walk with the help of crutch. The claimant claimed Rs. 10,00,000/- as compensation.

3- The O.P. U.P.S.R.T.C. and the driver filed W.S. alleging therein that when the driver of the offending bus along with the bus reached at the place of accident, in order to overtake a cart, the Indica Car dashed the bus and accident had occurred due to rashness of the driver of Indica Car as its occupants were intoxicated. They denied their liability of compensation.

4- The O.P. No.3 Oriental Insurance Company filed its W.S. and alleged that the driver of the Indica Car was not driving it cautiously. Had the driver of the Indica Car been vigilant, he could have avoided the accident. The

Insurance Company also alleged that the claim petition is liable to be rejected.

5- On the basis of pleadings of parties, the Tribunal framed necessary issues. The claimant in support of his claim produced himself as P.W.1 and filed copies of F.I.R., technical examination report of Indica Car and various medical prescriptions and bills etc. The Opposite Parties produced Subhash Chandra the driver of offending bus and Naresh Kumar D.W.2 and also filed some documents.

6- The Tribunal on hearing learned counsel for parties and perusing the record awarded Rs. 3,37,000/- as compensation alongwith interest @ 6% per annum from the date of filing of claim petition till final payment, payable by U.P.S.R.T.C.

7- Feeling aggrieved the U.P.S.R.T.C. has filed this appeal.

8- We have heard the learned counsel for the parties and perused the record.

9- Learned counsel for the appellant has argued that the Tribunal committed illegality in awarding excessive amount of compensation to the claimant/respondent. He has submitted that the Tribunal has awarded exorbitant amount of compensation to the claimant/respondent under different heads.

10- After a careful perusal of the entire material on record it reveals that the claimant/respondent was admitted in C.M.I. Hospital, Dehradun on account of the injuries sustained by him. The claimant /respondent sustained injuries on the several parts of the body. The claimant/respondent has filed the documents showing the expenses incurred in his medical treatment. But in view of these documents it reveal that the claimant/respondent has incurred an amount of Rs.

95,000/- approximately in his medical treatment. The Tribunal has rightly awarded a sum of Rs. 95,000/- under the head of expenses incurred in the medical treatment of the claimant/ respondent.

11- The record also reveals that the father of the respondent/injured is a Senior Advocate, therefore, it can be safely inferred that the claimant also must be busy in dealing with the cases on behalf of his father. Due to the injuries sustained by the claimant, he could not do his work for about three months. The Tribunal has assessed the monthly income of the claimant as Rs. 14,000/- per month. Therefore, the claimant/respondent suffered a loss of Rs. 42,000/- under this head and we find that the Tribunal has rightly awarded him a sum of Rs. 42,000/- for loss of his profession during the period he was bed ridden.

12- As far as the future expenses in medical treatment are concerned, the respondent/claimant has not filed any cogent and reasonable evidence in this regard. However, the record shows that the claimant is expected to incur an additional amount of Rs. 25,000/- for his future medical treatment.

13- The record further reveals that the claimant/respondent has visited the hospital several times and he had gone Delhi eight times for laser treatment of his eye. Therefore, the Tribunal has rightly awarded a sum of Rs. 50,000/- to the respondent/claimant for transportation.

14- The claimant has suffered a number of injuries on his person and he had to be admitted in the hospital for a long time. He must have suffered inconvenience, disappointment, frustration and mental stress on account of the injuries suffered by him. The Tribunal has therefore, rightly awarded an amount of Rs. 50,000/- to the claimant/respondent under this head.

15- As far as the amount of Rs. 75,000/- awarded by the Tribunal under the head frustration and mental stress in the life in future is concerned, we don't feel that this amount awarded by the Tribunal is justified. The claimant/respondent has awarded a sum of Rs. 50,000/- for mental stress and frustration. Therefore, the Tribunal has erred in awarding further sum of Rs. 75,000/- for future frustration and mental stress and this amount awarded by the Tribunal is liable to be set aside.

16- For the reasons stated above, the appeal is liable to be partly allowed. The respondent/claimant is entitled to get the compensation as under:

Rs. 95,000/- + Rs. 42,000/- + Rs. 25,000 + Rs. 50,000/- + Rs. 50,000/- = Rs. 2,62,000/- instead of Rs. 3,37000/- as has been awarded by the Tribunal.

17- As far as the rate of interest indicated in the impugned judgment and award is concerned, the same does not require any interference.

18- In view of the above observations, the appeal is partly allowed. The judgment and award dated 30.07.2005 is modified to the extent that the claimant/respondent is awarded as sum of Rs. 2,62,000/- as compensation instead of Rs. 3,37,000/- as has been awarded by the Tribunal. No order as to costs.

(B.S. Verma, J.) **(B.C. Kandpal, J.)**

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